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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/553,269 | 10/10/2006 | Reinhard Averdiek | 10537/309 | 6890 |
| 26646 7590 07/25/2008 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004 | | | EXAMINER ROCCA, JOSEPH M | |
| | | | ART UNIT 3616 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/553,269

Applicant(s)

AVERDIEK ET AL.

Examiner

Joseph Rocca

Art Unit

3616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE-08)
Paper No(s)/Mail Date 10/12/05, 10/10/06
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 10-13 and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Adams et al. (U.S. 6,269,900 B1).

Adams discloses a safety device for a motor vehicle, comprising:

a front-end structure (Figs. 8-10, Element 2b);

a front bulkhead (Figs. 8-10, Element 4) separating the front-end structure from an interior; and

a brake apparatus (Figs. 8-10, Element 6) fixed to the front bulkhead and including a brake cylinder, the brake cylinder including a pivot device adapted to pivot the brake apparatus and to interact, in an event of a vehicle crash, with structural elements (Figs. 8-10, Element 11b) arranged in the front-end structure (Figs. 8-10, Element 4), the pivot device including a fastening portion and a slide portion having a slide plane (Element 11b, wherein fork-shaped portion (see, Col. 6, Lines 51-57) is the fastening portion and slide portion, since it fastens and allows sliding to element 12b).

Applicant should note with respect to claim 19, that the above apparatus also is the "means for pivoting," as recited in claim 19.

With respect to claim 11, Adams further discloses that the pivot device (Element 11b) is arranged at, in a direction of travel, a forward-pointing end face of the brake cylinder (Figs. 8-10).

Regarding claim 12, Adams further discloses that the pivot device (Figs. 8-10, Element 11b) is detachably connected to the brake cylinder.

With respect to claim 13, Adams further discloses that the slide plane is aligned so that the brake apparatus, in the event of the vehicle crash, performs a swivel motion about a substantially horizontal plane (note Figs. 8-10, which show apparatus in various states of deformation).

Regarding claim 18, Adams further discloses that the fastening portion includes reception fixtures for fastening devices, wherein the forked portions of element 11b and the portion 12b of the brake apparatus are the reception devices / fastening portions.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Verbo et al. (U.S. 5,890,358) in view of Adams et al. (U.S. 6,269,900 B1).

Verbo discloses a safety device for a motor vehicle, comprising: a brake apparatus including a brake cylinder (Elements 1, 2, and 12; Col. 2, Lines 27-31), the brake cylinder including a pivot device (Element 3) adapted to pivot the brake apparatus

and to interact, in an event of a vehicle crash, with structural elements arranged in the front-end structure, the pivot device including a fastening portion and a slide portion having a slide plane (Col. 2, Lines 31-36). With respect to claim 19, applicant should note that the above apparatus also is the recited "means for pivoting," of claim 19.

Verbo does not specifically discuss or show, either a front-end structure; a front bulkhead separating the front-end structure from an interior, nor that brake apparatus is fixed to the front bulkhead. Nevertheless it is old and well known to utilize a front-end structure; a front bulkhead separating the front-end structure from an interior, and a brake apparatus that is fixed to the front bulkhead as part of an automobile.

Adams teaches a front-end structure (Element 2); a front bulkhead (Element 4) separating the front-end structure from an interior, and a brake apparatus (Element 6) that is fixed to the front bulkhead.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Verbo, such that the device was located in an environment where a front-end structure; a front bulkhead separating the front-end structure from an interior, and a brake apparatus that is fixed to the front bulkhead as part of an automobile, was utilized, in view of the teachings of Adams, since doing so is a predictable variation that one of ordinary skill in the art would recognize as no more than the predictable use of prior art elements according to their established functions because the components taught by Adams and used as part of the modification are simply old and well known components, which are being utilized in a known environment carrying out the same function they otherwise would so as to show known

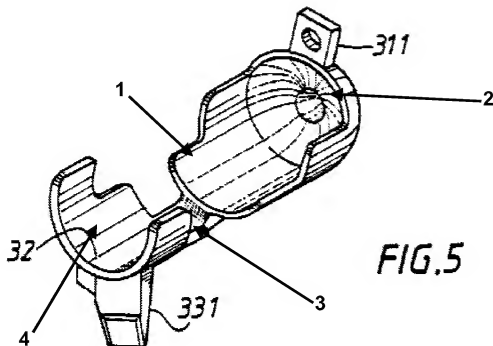
locations for these parts as would be known to those of ordinary skill in the art at the time of invention.

With respect to claim 11, the combination of Adams as modified in view of Verbo, further discloses that the pivot device is arranged at, in a direction of travel, a forward-pointing end face of the brake cylinder.

Regarding claim 12, the combination of Adams as modified in view of Verbo, further discloses that the slide plane is aligned so that the brake apparatus, in the event of the vehicle crash, performs a swivel motion about a substantially horizontal plane.

With respect to claim 13, the combination of Adams as modified in view of Verbo, further discloses that the slide plane is aligned, so that the brake apparatus, in the event of the vehicle crash, performs a swivel motion about a substantially horizontal plane.

Regarding claim 14, the combination of Adams as modified in view of Verbo, further discloses that the slide portion includes four faces forming a cavity, one face of the four faces forming the slide plane (See, Figure 5, of Verbo, and notation showing what is interpreted as each of the four faces forming the cavity). Note that either faces one and/or four may be broadly and reasonably called sliding planes since the portion is slide on the brake apparatus for purposes of attachment.



With respect to claim 15, the combination of Adams as modified in view of Verbo, further discloses that the cavity, in a longitudinal section in a vertical direction of the motor vehicle, has a triangular cross-section, one corner of the triangular cross-section aligned downwardly (note side view of Figs. 1, 3, 5, and 6, wherein bottom portion of cavity -- the surface extending from below surface 3 as shown in annotated drawing above -- has a triangular cross-section aligned downwardly).

Regarding claim 16, the combination of Adams as modified in view of Verbo, further discloses that at least one of the four faces of the slide portion includes a downwardly increasing wall thickness (note the lower surface below surface 3 of the cavity -- as shown in annotated drawing above -- shows that the wall thickness from front to back below surface 3 increases vertically).

With respect to claim 17, the combination of Adams as modified in view of Verbo, further discloses that the cavity includes a discharge opening (wherein the portion making the surface 3 lower than surfaces 1 and 4 -- as shown in the annotated drawing above -- is a discharge opening in that it enables any liquids which would accumulate to drain out from this portion.

Regarding claim 18, the combination of Adams as modified in view of Verbo, further discloses that the fastening portion includes reception fixtures for fastening devices (wherein surfaces 1, 2, and 4 -- as shown in the annotated drawing above -- are reception fixtures and the part of the brake apparatus attached to these are the fastening devices) .

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant should note that Mueller (U.S. 7,337,868 B2) although not prior art based on its may be of interest to applicant based on similarities between the present invention and the cited patent.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Rocca whose telephone number is 571-272-5191. The examiner can normally be reached on 8:30 AM to 5:00 PM, Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on 571-272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Paul N. Dickson/
Supervisory Patent Examiner, Art Unit 3616

/Joseph Rocca/
Examiner, Art Unit 3616